IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.28 OF 2001

Olivia Pereira,
r/o H.No.302,
Orlim, Salcete, Goa ... PETITIONER

VERSUS

1. Larry Beningo Santarita
Martins, s/o Gilbert
Alexandra Xavier Martins,
r/o Velim, Baga,
H.No.491, Colaco Vaddo,
Velim, Salcete, Goa;

2. State of Goa
through the Public Prosecutor,
Panaji, Goa ... RESPONDENTS.

Mr. D. Pangam, Advocate for the Petitioner.

Mr. J.S. Prabhu, Advocate for the Respondent No.1, absent.

Mr. A.P. Lawande, Public Prosecutor, for the Respondent No.2 State.

CORAM : D.G. DESHPANDE,J.

DATED : JANUARY 16, 2003.

ORAL JUDGMENT

Heard the Advocate for the original complainant/first informant, on whose report the State launched prosecution against the accused/Respondent for the offence under Section 307 of Indian Penal Code. Nobody is present for the accused. I heard the Advocate for the Applicant and Mr. Lawande for the State, who

supported the contentions raised by the Advocate for the Applicant.

2. It was the case of the complainant that on the date of the incident, i.e. 11-5-2000, the accused assaulted the Petitioner with a knife on the right side of her chest. F.I.R. was lodged to that effect. The incident was witnessed by the residents and others. The victim was examined by the Doctor and the medical evidence was also produced in the charge-sheet. On this basis the case was committed to the Court of Sessions for offences under Sections 452, 324 and 307 of the Indian Penal Code.

3. The learned Sessions Judge heard arguments at the time of framing of the charge and came to the conclusion that no case under Section 307 was made out and the only case which could be made out against the accused was under Section 324 of the I.P.C. and he, therefore, sent the case back to the Chief Judicial Magistrate, Margao for trial. It is this Order which is challenged by the victim by this Revision.

4. In his Order, the learned Sessions Judge does not dispute that it is the case of the

prosecution that the Applicant victim was assaulted by the accused by means of a knife on the right side of her chest. The Advocate for the accused who made submissions before the trial Court contended that there was no **mens rea** on the part of the accused nor any intention to commit murder of complainant's wife and that for attracting Section 307 I.P.C., the attack was to be on the vital part of the body, and that too, by a dangerous weapon. This submission is strongly opposed by the learned A.P.P. before the trial Court and it is difficult to find out even after going through the Order of the trial Court, as to what weighed the trial Court in holding that it was not a case under Section 307 of the I.P.C.. The trial Court has referred to different judgments of the High Courts and the Supreme Court without going through the facts brought on record that the victim was assaulted on chest by a knife causing a serious injury and without going through the certificate of the Doctor as to the nature and extent of the injuries.

5. In Para 11, even though the injuries were on the vital part of the body and a dangerous weapon was used in causing them, the trial Court observed and held that in its opinion the intention to cause death is not disclosed by the facts and

circumstances. Mr. Lawande also contended that the Order is perverse and contrary to the record. It is so and, therefore, this Revision is allowed.

6. The impugned Order is quashed and set aside. The matter will be tried by the Sessions Judge after framing charges under Sections 307, 452 and 324 of the Indian Penal Code.

D.G. DESHPANDE,J.

ac.